

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 9, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1600-CR

Cir. Ct. No. 2002CF1376

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ODELL M. HARDISON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
GLENN H. YAMAHIRO, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Odell M. Hardison, *pro se*, appeals the circuit court's order denying his postconviction motion. The issue is whether Hardison's claim is barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We conclude that it is barred. Therefore, we affirm.

¶2 Hardison was convicted of two counts of possession of a firearm by a felon, two counts of delivering cocaine, as a second or subsequent offense, and one count of maintaining a drug trafficking place as a second or subsequent offense. During the initial stages of postconviction proceedings, Hardison discharged his appointed appellate counsel. He filed two motions for postconviction relief and a direct appeal *pro se*, which were unsuccessful. In the nine years since Hardison's conviction was affirmed on direct appeal, he has filed over a dozen motions, appeals and petitions for writ of *habeas corpus* challenging various aspects of his convictions.

¶3 The postconviction procedures of WIS. STAT. § 974.06 (2011-12)¹ allow a defendant to attack his conviction after the time for appeal has expired. See *Escalona-Naranjo*, 185 Wis. 2d at 176. There is, however, a limitation: a claim that could have been raised on direct appeal or by prior motion is barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the claim earlier. See *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756.

¶4 Hardison has raised several new arguments in his latest quest for postconviction relief, including a claim that he received ineffective assistance of postconviction counsel on his direct appeal. He contends that his postconviction counsel's allegedly deficient performance is the reason he did not previously raise his claims. Hardison has apparently forgotten that *he* discharged his appointed attorney during the initial stages of the postconviction process, before

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

postconviction motions or a direct appeal had been brought, so he was free to raise whatever issues he wanted to raise. Hardison cannot argue that he received ineffective assistance of counsel from an attorney who did not represent him. Moreover, Hardison has failed to provide a sufficient reason for not raising his current claims in the multiple postconviction motions, writs and appeals he has brought since his direct appeal. Allowing “[s]uccessive motions and appeals, which all could have been brought at the same time” is prohibited by WIS. STAT. § 974.06 and *Escalona-Naranjo*, which teaches that “[w]e need finality in our litigation.” *Id.*, 185 Wis. 2d at 185.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

